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OFFICE OF PETITIONS

In re
Grimse, et al.
Application No. 09/805,646
Filed: March 13, 2001
Patent No. 6,850,924
Issued: February 1, 2005

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "PETITION FOR PATENT TERM RESTORATION UNDER 37 CFR § 1.705(d)," filed February 11, 2005, requesting correction of the patent term adjustment (PTA) indicated on the patent.

The petition is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **six hundred thirty-two (632)** days.

On September 15, 2004, the Determination of Patent Term Adjustment was mailed, indicating a patent term adjustment of two hundred ninety-four (294) days. Applicants timely filed an application for patent term adjustment on December 1, 2004. The application for patent term adjustment was not acted upon, and on February 1, 2005, the application matured into U.S. Patent No. 6,850,924. The patent issued with a Patent Term Adjustment of two hundred forty (240) days.

Patentees assert entitlement to a patent term adjustment of 470 days on the basis that the PTO improperly assessed applicant delay of fifty-four (54) days for filing an application for patent term adjustment on December 10, 2004. In addition, as originally stated in the December 10, 2004 application for patent term adjustment, patentees argue that they were improperly assessed applicant delay of one hundred seventy-six (176) days for responding to an August 26, 2003 Office action on May 20, 2004. According to patentees, their response was filed on December 1, 2003, and as such they should have been assessed five (5) days of applicant delay, not 176.

Patentees state that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of two hundred forty (240) days based on an adjustment for PTO delay of four hundred seventy (470) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delay of one hundred seventy-six (176) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b) and fifty-four (54) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(10). The adjustments of 176 and 54 days are at issue.

The adjustment of 176 days has been found to be incorrect. Patentee has submitted a copy of a postcard receipt for the instant application, itemizing a "Response to Office Action" and bearing a USPTO date stamp of December 1, 2003. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.¹ Accordingly, by filing on December 1, 2003, patentees should have been assessed five (5) days of applicant delay.

¹ MPEP 503.

In view of the above, pursuant to 37 C.F.R. § 1.703(a)(2), the Office had four months, or until April 1, 2004, to mail an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. The Office mailed a Notice of Allowance on September 15, 2004. Therefore, PTO delay of one hundred sixty-seven (167) days should have been assessed.

Lastly, the adjustment of 54 days for the filing of an application for patent term adjustment on December 10, 2004 has been found to be incorrect. See 37 C.F.R. § 1.704(e).

Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 C.F.R. § 1.322 is appropriate. The correct determination of patent term adjustment is six hundred thirty-two (632) days (637 days of PTO delay, reduced by 5 days of applicant delay).

The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 07-1896, as authorized.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **six hundred thirty-two (632)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Karin Ferriter
for*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: copy of draft Certificate of Correction

Day : Wednesday

Date: 3/30/2005
Time: 11:18:50**PALM INTRANET****PTA Calculations for Application: 09/805646**

Application Filing Date:	03/13/2001	PTO Delay (PTO):	470
Issue Date of Patent:	02/01/2005	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	230
Post-Issue Petitions:	0	Total PTA (days):	632
PTO Delay Adjustment:	392		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
35	03/30/2005	ADJUSTMENT OF PTA CALCULATION BY PTO	392		
30.5	01/12/2005	PTA 36 MONTHS			
30	02/01/2005	PATENT ISSUE DATE USED IN PTA CALCULATION			
29	01/07/2005	RECEIPT INTO PUBS			
28	01/06/2005	DISPATCH TO FDC			
27	01/06/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
26	12/10/2004	ISSUE FEE PAYMENT VERIFIED			
25	12/10/2004	MISCELLANEOUS INCOMING LETTER		54	
24	12/10/2004	ISSUE FEE PAYMENT RECEIVED			
23	12/01/2004	RECEIPT INTO PUBS			
22	10/12/2004	RECEIPT INTO PUBS			
21	09/27/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
20	09/15/2004	MAIL NOTICE OF ALLOWANCE			
19	09/14/2004	CORRESPONDENCE ADDRESS CHANGE			
18	09/14/2004	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
17	09/14/2004	ISSUE REVISION COMPLETED			
16	09/14/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
15	09/14/2004	NOTICE OF ALLOWABILITY			
14	07/02/2004	REFERENCE CAPTURE ON IDS			
13	05/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	07/02/2004	DATE FORWARDED TO EXAMINER			
11	05/20/2004	RESPONSE AFTER NON-FINAL ACTION		176	8

10	05/20/2004	WORKFLOW INCOMING AMENDMENT IFW			
9	12/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	08/26/2003	MAIL NON-FINAL REJECTION	470		-1
7	08/22/2003	NON-FINAL REJECTION			
6	08/18/2003	CASE DOCKETED TO EXAMINER IN GAU			
5	12/07/2001	APPLICATION DISPATCHED FROM OIPE			
4	11/15/2001	APPLICATION IS NOW COMPLETE			
3	04/04/2001	CORRESPONDENCE ADDRESS CHANGE			
2	03/31/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/13/2001	INITIAL EXAM TEAM NN			

Search Another: Application#

EXPLANATION OF PTA CALCULATION

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Back to [PALM](#) | [ASSIGNMENT](#) | [OASIS](#) | Home page